

DOCKET SECTION

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

POSTAL RATE AND FEE CHANGES, 1997

Docket No. R97-1

OPPOSITION OF UNITED STATES POSTAL SERVICE
TO DAVID B. POPKIN'S SECOND MOTION TO COMPEL
RESPONSES TO INTERROGATORIES DPB/USPS-10-12
(December 11, 1997)

On September 8, 1997, David B. Popkin submitted a large volume of institutional interrogatories to the Postal Service, including interrogatories 10 through 12. The Postal Service objected to these interrogatories, among others, on September 25, 1997, on the grounds that these detailed, multi-part questions concerning Express Mail operational procedures were not reasonably calculated to lead to the production of admissible evidence, were only marginally relevant to the issues of this case, and would be unduly burdensome to answer. On October 30, 1997, in response to a Motion to Compel filed by Mr. Popkin, the Presiding Officer ruled that the Postal Service need respond only to 11(a)-(b) and 12(a)-(b), which sought general information about Express Mail service. With respect to the remainder of questions 10 through 12, the Presiding Officer concluded that "generally the operational details of a service are beyond the scope of material issues in a rate proceeding," but suggested that in future Mr. Popkin might be granted leave to ask particular questions regarding the details of Express Mail service if he were to "better articulate the necessity of doing so." Presiding Officer's Ruling No. R97-1/53 at 5.

On November 20, 1997, Mr. Popkin filed another Motion to Compel, again seeking responses to the remainder of interrogatories 10 through 12, among others.^{1/} In further explanation of the intent of his interrogatories, Mr. Popkin states that questions 10 and 11 were utilized to attempt to determine the level of service that exists for Express Mail, and to show that the claimed level of service does not in fact exist. With respect to interrogatory 12, Mr. Popkin states that he seeks to determine the extent to which "the Postal Service has a delivery standard that matches or exceeds that of the recently eliminated Special Delivery."

The Postal Service hereby again opposes productions of the requested responses to interrogatories 10 through 12. As found by the Presiding Officer on the occasion of the first motion to compel, such interrogatories generally are not within the bounds of appropriate discovery. Nothing in Mr. Popkin's recent explanations would compel an exception to this standard. Interrogatory 10 consists of a plethora of questions regarding minute details of the service expected to be received by particular types of Express Mail, particularly "A" label and "B" label Express Mail sent from varying locations to varying locations. While questions regarding the general level of service experienced by Express Mail as a whole relative to other classifications of mail would have a bearing on Express Mail's relative rate and contribution levels, the operational details sought in this interrogatory are likely to contribute little to the record in this case, and would be very burdensome to produce. For example, in subparts (h)-(i), the Postal Service is asked to provide a complete listing of all addresses across the nation to which "B" Label service may be sent, together with all addresses to which it may not be sent. In subpart (j), the Postal Service is asked to provide information regarding the

¹ In separate pleadings to be filed today, the Postal Service opposes the Motion to Compel with respect to other interrogatories.

process under which particular addresses are determined to fall within a particular location's overnight "A" Label delivery area. At least several complete days would be required to answer every such detailed question, along with the sacrifice of many trees. Moreover, the general tenor of the questions indicates a desire to argue with the Postal Service regarding the proper procedures which should be followed in establishing and implementing service standards. The ruling made on October 30 that such questions need not be answered should be reaffirmed.

Similar reasoning would support denial of the Motion with respect to interrogatory 11, which consists of many questions generally related to acceptance availability, acceptance cut-off times, available delivery areas, and other details of Express Mail service. For example, the extent to which "late night Express Mail acceptance points are established at large post offices and mail processing facilities" (subpart h) simply does not have much relevance to the Express Mail rates sought in this proceeding.

Especially objectionable is interrogatory 12, which consists of many detailed questions generally related to the delivery service likely to be received by an Express Mail piece under varying hypothetical conditions relating to unspecified delivery offices. Mr. Popkin now claims that the intent of these 16 subparts is to determine the extent to which "the Postal Service has a delivery standard that matches or exceeds that of the recently eliminated Special Delivery." This new explanation fails to provide any compelling justification why the October 30, 1997 ruling should be reversed. The Commission is unlikely to require comparative information relating to nonexistent services in carrying out its duties in this case. Furthermore, a repeated inspection of these questions should confirm the Presiding Officer's earlier conclusion that the information sought is of little relevance, is not reasonably calculated to lead to the

production of admissible evidence and would impose an undue burden on the Postal Service.


Mr. Popkin has had several opportunities to pursue legitimate discovery regarding issues relevant to Express Mail Service. He has already had one motion to compel denied with respect to interrogatory 10 and most of interrogatories 11 and 12. At hearings, he was allowed, through the good graces of counsel for the OCA, to inquire further regarding the very issues which were the subject of this earlier motion to compel. Indeed, he received answers to some of the questions the Presiding Officer ultimately ruled did not need to be answered. See Tr. 4/2123-35. The time has come to finally conclude this line of questioning. The Motion to Compel responses to interrogatories 10 through 12 again should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

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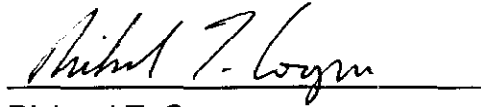
A handwritten signature in cursive script, appearing to read "Richard T. Cooper", is written over a horizontal line.

Richard T. Cooper

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December 11, 1997

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the Rules of Practice.

A handwritten signature in black ink, appearing to read "Richard T. Cooper", is written over a horizontal line.

Richard T. Cooper

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